

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 8B.1, 8B.10, and 427.1(40), the Office of the Chief Information Officer (OCIO) hereby adopts new Chapter 20, “Broadband Infrastructure—Targeted Service Areas,” and new Chapter 21, “Broadband Infrastructure—Project Certification,” Iowa Administrative Code.

The subject matter of Chapters 20 and 21 is related to the OCIO’s role in the broadband infrastructure property tax exemption. These chapters are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 8B.10, 17A.3, and 427.1(40). Iowa Code sections 8B.1 and 8B.10 require the OCIO to determine whether census blocks within the state of Iowa constitute “targeted service areas” as defined by Iowa Code section 8B.1 and to provide a process by which persons may challenge such determinations. Iowa Code section 427.1(40) allows for a property tax exemption for the installation of broadband infrastructure by communications service providers in targeted service areas, which installations meet certain requirements, including receipt of certification from the OCIO that: (1) the project is being performed or was completed in a targeted service area; and (2) the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed (“25/3 broadband service”).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2699C** on August 31, 2016. Public comments were allowed until 4:30 p.m. on September 20, 2016. A public hearing was held on September 20, 2016. The OCIO received public comments on this rule making. The OCIO made one substantive change related to the field testing provisions of these rules based on the public comments.

The Iowa Communications Alliance (ICA) made three comments related to the field testing provisions in proposed rule 129—21.8(8B,427). First, ICA commented that the OCIO should group the different types of field tests that it may conduct according to whether a broadband installation is a wireline installation versus a wireless installation. The OCIO’s rules proposed under Notice of Intended Action grouped the different types of field tests that the OCIO may conduct according to whether the broadband installation was a fixed installation (both wireline and fixed wireless) versus a mobile installation. The OCIO agrees that the grouping proposed by the ICA is the preferred grouping; the OCIO’s consolidation of proposed subrules 21.8(1) and 21.8(2) in rule 129—21.8(8B,427) should address ICA’s comment (and other comments).

Second, ICA commented that the OCIO should determine by rule that any broadband installation using fiber-optic technology is automatically deemed to facilitate 25/3 broadband service such that no field testing is required. Specifically, ICA noted that: (1) fiber-optic networks provide the fastest and most reliable service available and are typically not subject to speed degradation due to distance, weather conditions, or geographic/terrain factors; (2) fiber-optic networks are not subject to broadband speed degradation due to the number of consumers accessing the service at any one time; and (3) to conduct a speed test on a fiber-optic network, it would likely be necessary to physically unhook the fiber cable where it attaches to the consumer location (or the node) and attach a measuring device, and such interruption of service will likely be intrusive to the consumer. After careful consideration, the OCIO has declined to adopt ICA’s suggestion as the OCIO has determined that exempting fiber-optic installations from field testing would be inconsistent with the OCIO’s statutory obligations with regard to: (1) “collecting data and developing metrics or standards against which the data may be measured and evaluated regarding broadband infrastructure installation and deployment” (see Iowa Code section 8B.4(15)); and (2) directing the Iowa Department of Revenue or applicable county board of supervisors, as applicable, to “require the property owner receiving the exemption to substantiate that the owner continues to provide the service described in paragraph ‘b’ [Iowa Code section 427.1(40)“b”]” (see Iowa Code section 427.1(40)“f”(7)). Further, even assuming every fiber-optic installation per se satisfies the statutory speed requirements, the OCIO needs a mechanism to confirm that a claimed fiber-optic

installation is in fact a fiber-optic installation, put another way, to prevent fraudulent property-tax exemption claims.

Finally, ICA commented that for fixed wireless and mobile wireless installations, the OCIO should only conduct field tests: (1) from a location near a home, business, school, or farm located in the applicable targeted service area or from any other location reasonably identified by the OCIO located in the applicable targeted service area because none of the other locations outlined by the noticed rules accurately measures whether a given wireless installation facilitates 25/3 broadband service within the applicable targeted service area; and (2) during peak demand times to ensure consumers consistently receive the required speeds, because broadband delivered wirelessly is usage-based—the more people using the service, the slower the speeds for each user.

With respect to the first half of ICA's third comment, the OCIO agrees that this is the preferred way to measure whether a given wireless installation facilitates 25/3 broadband service in the applicable targeted service area; the OCIO's consolidation of subrules 21.8(1) and 21.8(2) should address this comment. With respect to the second half of ICA's third comment, after careful consideration, the OCIO has declined to adopt ICA's suggestion as the OCIO has determined that ICA's suggestion would be ultra vires to the statute, which does not require or otherwise authorize the OCIO to specify that the required speeds be met with any particular frequency.

The OCIO adopted these rules on October 5, 2016.

An agencywide waiver provision has not yet been adopted by the OCIO, but will be adopted in a subsequent rule-making proceeding.

After analysis and review of this rule making, a positive impact on jobs may exist. These rules implement the underlying certification rules relating to a property tax exemption for the installation of new broadband infrastructure and further the goals of the Connect Every Acre initiative to provide broadband services to underserved areas in the state.

These amendments are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 8B.10, 17A.3, and 427.1(40).

These amendments will become effective November 30, 2016.

The following amendments are adopted.

ITEM 1. Reserve **129—Chapter 7 to Chapter 19.**

ITEM 2. Adopt the following new 129—Chapter 20 and 129—Chapter 21:

TITLE II
BROADBAND

CHAPTER 20

BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

129—20.1(8B,427) Definitions. For purposes of this chapter, the following definitions shall govern.

“Broadband” means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

“Broadband infrastructure” means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

“Census block” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

“Chief information officer” or *“CIO”* means the state chief information officer or the state chief information officer's designee.

“Communications service provider” means a service provider that provides broadband service.

“Crop operation” means a commercial enterprise where a crop is maintained on the property of the commercial enterprise.

“Date of commencement” means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

“Date of completion” or *“completed”* means the date that a communications service provider offers or facilitates broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area.

“Installation of the broadband infrastructure” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

“Is being performed” includes but is not limited to the planning, preparation, design, architecture, labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services.

“Office” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“Targeted service area” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015.

129—20.2(8B,427) Scope. This chapter applies to the office’s determinations of whether a census block is a targeted service area and to persons who wish to challenge the office’s finding on whether a census block is a targeted service area.

129—20.3(8B,427) Broadband availability maps and data sources. To determine whether a communications service provider offers or facilitates broadband service in a particular census block at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015, the office utilized broadband availability maps and corresponding data sources made available by Connect Iowa, LLC, a subsidiary of Connected Nation, Inc. Such maps and data sources were widely accepted for accuracy and made available for public review and comment. By selecting these maps and data sources, the office has satisfied its obligation to reference broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment as required by Iowa Code section 8B.10(1).

129—20.4(8B,427) Targeted service area determination. The office will create a statewide map divided into census blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate census blocks within which, as of July 1, 2015, no communications service provider offered or facilitated broadband service to the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. This statewide map shall be available online at <http://ocio.iowa.gov/>. As of November 30, 2016, targeted service area designations as shown on the statewide map shall be considered the office’s final determination and finding of whether a particular census block constitutes a targeted service area, unless a person or party successfully challenges the office’s determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office’s determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office’s determination and finding with respect to that particular census block final and no longer subject to challenge. A party’s failure to challenge the office’s determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

129—20.5(8B,427) Appeals.

20.5(1) Notice of appeal. Within 20 days after the office makes its final determination of whether a particular census block constitutes a targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

a. The notice of appeal shall set forth:

- (1) The name, address, telephone number, and e-mail address of the person or party;
- (2) The particular census block designation the person or party is challenging by stating:

1. The census block number as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the census block is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

- (3) The manner in which the person or party is aggrieved or adversely affected by the office's determination; and

- (4) The grounds upon which the appeal is based.

b. Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

20.5(2) Filing. Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by electronic mail (e-mail) at cio@iowa.gov. To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

20.5(3) Notification of and input from affected persons or parties. Within 10 calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at <http://ocio.iowa.gov/>. From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by electronic mail (e-mail) to cio@iowa.gov. To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

20.5(4) Internal review. At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same census block and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office.

20.5(5) Final agency decision. Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the census block in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at <http://ocio.iowa.gov/>. The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

20.5(6) Time of filing. In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case

proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

20.5(7) Public records. The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

- a.* A person or party requesting confidential treatment of evidence or information submitted must:
 - (1) Fully complete and submit to the office Form 22 (available online at <http://ocio.iowa.gov/>);
 - (2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal e-mail or the written explanation of why electronic filing was not feasible;
 - (3) Conspicuously mark the outside of any submission as containing confidential evidence or information;
 - (4) Mark each page upon which confidential evidence or information appears; and
 - (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.
- b.* Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:
 - (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;
 - (2) Justifies why the specific evidence or information should be maintained in confidence;
 - (3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and
 - (4) Sets forth the name, address, telephone number, and e-mail address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.
- c.* Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

129—20.6(8B,427) Contested cases. A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

20.6(1) Notice of hearing. Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the census block forming the basis of the contested case, or appealed the office's determination of the census block forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the census block forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

20.6(2) Consolidation. In the event any contested cases concerning the same census block are initiated separately, such matters shall be consolidated.

20.6(3) Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

20.6(4) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

20.6(5) Telephone hearing. If the hearing is conducted by telephone or other electronic means, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted. Telephone hearings shall be strongly encouraged.

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, 17A.3, and 427.1(40).

CHAPTER 21 BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

129—21.1(8B,427) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter.

129—21.2(8B,427) Scope. This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure is being performed or was completed in a targeted service area, and that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

129—21.3(8B,427) Application for certification. Applications for certification shall be completed and submitted online at <http://ocio.iowa.gov/>. In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business name and address and the name, address, telephone number, and e-mail address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;

2. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service area in which the installation of the broadband infrastructure is being performed or was completed);

3. Attestation that the broadband infrastructure installed in the targeted service area(s) facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed; and

4. Any other information as requested in the application.

129—21.4(8B,427) Time of filing. Except as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its online submission pursuant to rule 129—21.3(8B,427). Notwithstanding the foregoing, except as otherwise authorized by the office, an application for certification will not be deemed filed prior to the expiration of the initial 20-day appeal period specified in 129—subrule 20.5(1).

129—21.5(8B,427) Notice of decision and issuance of certificate. The office shall notify the communications service provider by electronic means of its decision regarding an application for

certification within 30 days of the filing of an application and, if appropriate, shall issue a certification by electronic means within that same time frame. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.

129—21.6(8B,427) Contents of certification. The certification shall state the communications service provider for which the certification is being issued, the census block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the census block(s) in which the installation is being performed or was completed are targeted service area(s), that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.

129—21.7(8B,427) Targeted service areas subject to challenge. To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular census block forming the basis of such application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning census blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).

129—21.8(8B,427) Certification of completion and field testing. To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40) "b" at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.

These rules are intended to implement Iowa Code sections 8B.1, 8B.3, 8B.4(15), 17A.3, and 427.1(40).

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